

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,050

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare declining to issue a "declaratory judgement" regarding whether a proposed action by the petitioner's power of attorney will affect the petitioner's eligibility for medicaid. The issue is whether the petitioner has presented a sufficient case in controversy requiring the Department to respond to her request for a declaratory ruling. In lieu of an oral hearing, the parties submitted the case for the Board's consideration on the basis of an exchange of written statements.

ORDER

The Department is directed to issue a declaratory judgement forthwith that responds to the petitioner's request.

REASONS

The Vermont Administrative Procedures Act (APA) sets forth procedures whereby individuals can request declaratory rulings from state agencies. 3 V.S.A. § 808 provides as follows:

Each agency shall provide for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency, and may so provide by procedure or rule. Rulings disposing of petitions have the same status as agency decisions or orders in contested cases.

In interpreting the above statute, the Vermont Supreme Court has ruled:

The availability of declaratory relief turns on whether the plaintiff is suffering the threat of actual injury to a protected legal interest, or is merely speculating about the impact of some generalized grievance. On the face of the complaint, the plaintiff must allege at least the threat of an "injury in fact" to some protected interest in order to establish his or her standing.

Town of Cavendish v. Vermont Public Power Supply Authority, 141 Vt. 144, 147-148 (1982).

In this case the petitioner has been found ineligible for medicaid because of the existence of a trust of which she and her disabled son are beneficiaries. In response to that decision the petitioner has petitioned the Department for a ruling on whether, and to what extent, the petitioner's eligibility for medicaid would be affected if the petitioner were to waive her interest in the trust and make the trust solely available to her son. Understandably, the petitioner does not want to take this action if it would not qualify her for medicaid because then she would be left not only without medicaid coverage, but also without access to the assets that initially led to her ineligibility.

It must be concluded that the petitioner's request in this matter constitutes a clear "threat of injury" sufficient to entitle her to a declaratory judgement from the Department under § 808 of the APA, supra. Unless and until the Department rules on her request, the petitioner faces the Hobson's choice of continuing her ineligibility for medicaid, thus depleting the assets that were allegedly intended to also be used for the benefit of her son, or risking an action that would leave her both ineligible for medicaid and without assets of her own. This appears to be exactly the type of scenario that is within the contemplation of § 808. ⁽¹⁾

At this time the Board need not rule, or even comment, on the "merits" of the petitioner's request. ⁽²⁾ Under § 808, if the petitioner is not satisfied with the Department's response, she can then appeal that decision to the Board. In the meantime, however, the Department is clearly obligated to provide her with that response, and it is ordered to do so forthwith.

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1. The hearing officer is puzzled by the Department's position in this matter. He (as did the Department's attorney) recently attended a legal education seminar in which it was represented that the Department frequently and routinely provides declaratory rulings in precisely these types of scenarios.
2. Obviously, however, if the petitioner can establish that the Department has, in fact, allowed transfers of trust assets in other cases under the same circumstances, the Department would be hard pressed to justify a denial herein. It is emphasized, however, that the hearing officer has no knowledge of such allowances in the past, and, if the Department denies the petitioner's request, it would clearly be the petitioner's burden of proof to establish that the Department has granted such requests in the past.